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SUBJECT: 2009 INVESTMENT CLIMATE STATEMENT SOUTH AFRICA
(PART 1 OF 2)

REF: 08 State 123907

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¶1. (U) Summary. In response to Ref A, this cable presents the first part of post?s two-part 2009 Investment Climate Statement for South Africa. This is also Chapter 6 of the Country Commercial Guide for South Africa.

¶2. (U) BEGIN TEXT

Chapter 6 Investment Climate Statement FY2009

6.1 Openness to Foreign Investment
The government of South Africa is open to foreign investment, which it views as a means to drive growth, improve international competitiveness, and obtain access to foreign markets. Virtually all business sectors are open to foreign investors. No government approval is required, and there are almost no restrictions on the form or extent of foreign investment. The Department of Trade and Industry?s (DTI) Trade and Investment South Africa (TISA) division provides assistance to foreign investors. The DTI concentrates on sectors in which research has indicated that the country has a comparative advantage. TISA offers information on sectors and industries, consultation on the regulatory environment, facilitation for investment missions, links to joint venture partners, information on incentive packages, assistance with work permits, and logistical support for relocation. DTI publishes the "Investor's Handbook" on its website: http://www.thedti.gov.za/ (see "publications"). Macroeconomic management was strong over the past decade, with reduced levels of public debt, generally low inflation, and a progression from a fiscal deficit to a fiscal surplus, and a consistently positive rate of economic growth. The post-apartheid government has sought to liberalize trade and enhance international competitiveness by lowering tariffs, abolishing most import controls, undertaking some privatization, and reforming the regulatory environment. While this has resulted in several large foreign acquisitions in banking, telecommunications, tourism, and other sectors, foreign direct investment has fallen short of the government?s expectations. South African banks are well-capitalized and have little exposure to sub-prime debt or other

sources of financial contagion. However, in the wake of the recent global financial turmoil, Standard & Poor?s (S&P) and Fitch downgraded their outlook on South Africa?s sovereign credit from ?stable? to ?negative? in late 2008, reflecting concerns that capital outflows could depress the rand and make it difficult for South Africa to finance its growing current account deficit.

In August 2007, the DTI launched its National Industrial Policy Framework, and accompanying Industrial Policy Action Plan, to promote a more labor-absorbing and broader-based industrialization path in four lead sectors: capital or transport equipment; automotive; chemical, plastic fabrication and pharmaceuticals; and forestry, paper and furniture. Business-process outsourcing, clothing and textiles, tourism, and biofuels were also identified for immediate attention. The Policy Framework anticipates initiatives in the form of tariff reductions, increased industrial financing, and additional incentives for investors.

The Black Economic Empowerment (BEE) strategy is a government program to increase the participation in the Qgovernment program to increase the participation in the economy of historically disadvantaged South Africans. BEE requirements are specified in the Codes of Good Practice, which were published in the Government Gazette in February ¶2007. The codes set forth best practices for employment equity, skills development, enterprise development, preferential procurement, equity ownership, and small and medium-sized enterprises. They also permit multinational corporations to score equity ownership ?points? through the use of mechanisms not involving the transfer of equity if these mechanisms are approved by DTI and the multinationals have a global corporate policy of owning 100 percent of the equity in their subsidiaries. The American Chamber of Commerce and many individual U.S.

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companies had pressed for the right to use such "equity equivalent" mechanisms. A firm's BEE ?score? will be considered by government departments when awarding contracts, and in some cases is a requirement for tendering. While firms are not legally required to meet BEE criteria, they are less competitive for government tenders if they fail to meet the criteria. The BEE Codes of Good Practice and other pertinent BEE legislation may be found on DTI's website: http://www.thedti.gov.za/.

Some state-owned enterprises were privatized in the 1995-2004 period. The government has been restructuring most of the remaining state-owned enterprises rather than proceeding with plans for privatization since 2004. Transnet (transportation) is focusing on core sectors that support its freight transport and logistic business. Assets or businesses that are not part of this strategy are in the process of being sold to the private sector or are being transferred back to the government. Transnet transferred SA Express to the Department of Pubic Enterprises in 2008 and Transtel Telecom was sold to Neotel. Transnet is also selling off Luxrail (The Blue Train), Autopax, a passenger bus operation, and the IT service subsidiary arivia.kom. The Department of Minerals and Energy (DME) contracted with US power producer AES for a 1000 MW power project, but canceled the agreement when AES was unable to fulfill its contractual obligations. Other opportunities for private investment in the power sector are likely to follow DME?s announced policy to grant up to 30 percent of new energy projects to the private sector. The planned privatization of smaller parastatals, such as Safcol (forestry) and, in the case of Denel (defense), with partial buy-ins by foreign suitors of Denel subsidiaries, also afford opportunities for foreign investment.

6.2 Conversion and Transfer Policies

The South African Reserve Bank?s (SARB) Exchange Control Department administers foreign exchange policy. An authorized foreign exchange dealer, normally one of the large commercial banks, must handle international

commercial transactions and report every purchase of foreign exchange, irrespective of the amount, that is received by South African residents or companies. As a rule, there are only limited delays in the conversion and transfer of funds.
Non-residents may freely transfer capital into and out of South Africa, although transactions must be reported to authorities. Non-residents may purchase local securities without restriction. To facilitate repatriation of capital and profits, foreign investors should make sure that an authorized dealer endorses their share certificates as "non-resident." Foreign investors should also be sure to maintain an accurate record of investment.
South African subsidiaries and branches of foreign companies are considered to be South African residents, and, are subject to exchange control by the SARB. South African companies may, as a general rule, freely remit the following to non-residents: repayment of capital investments; dividends and branch profits (provided such transfers are made out of trading profits and are financed without resorting to excessive local borrowing); interest Qwithout resorting to excessive local borrowing); interest payments (provided the rate is reasonable); and payment of royalties or similar fees for the use of know-how, patents, designs, trademarks or similar property (subject to prior approval of SARB authorities).
South African companies have been permitted to invest in other countries without restriction (although SARB approval/notification is still required) since 2004.
South African individuals may freely invest in foreign firms listed on South African stock exchanges. Individual South African taxpayers in good standing may invest up to R750,000 in total (approximately $107,000) in other countries. South African banks are permitted to commit up to 40 percent of their domestic capital in other countries, but only 20 percent outside Africa. In addition, mutual and other investment funds may now invest up to 25 percent of their retail assets in other countries. Pension plans and insurance funds may invest 15 percent of their retail assets in other countries.

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